

Rosario Marinello
Proceeding in Forma Pauperis
266 Reservation Rd. # F-232
Marina, CA 93933

FILED

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United States District Court
Northern District of California

RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA. S.J.

Rosario Marinello

Plaintiff

v.

Case # C-08-0664-JW

California Department of Corrections

**MOTION FOR SUMMARY
JUDGEMENT**

And Rehabilitation

Defendant

I Rosario Marinello, proceeding in Forma Pauperis, move for an order for Respondent, the California Department of Corrections and Rehabilitation, to initiate the following actions:

- 1) Removal of Permanent Withhold, Reinstatement on Eligible Status for the Correctional Counselor I, and hired as a Correctional Counselor I within a reasonable time frame.
- 2) Compensatory Damages

Introduction

The following Statements of Facts support my claim of discrimination under Title VII of the Civil Rights act of 1964. The Department of Corrections and Rehabilitation has initiated actions that prevented my career advancement. These actions coincide within a specific time frame after I have engaged in protective activities.

Statement of Undisputed Facts

1) Accepted Offer For Limited Term Position as a Correctional Counselor I

Exhibit 15: Chronological List of events Since March 2005. (Letter dated March 3rd 2005)

In March of 2005, I received a letter dated March 3rd confirming my acceptance of a 24 month limited term CCI Position at CTF- Soledad. During a Background Investigation commencing in April of 2005 I demonstrated that I exceeded minimum qualifications and that I am physically and mentally capable of performing the duties of the position.

2) Completed and Passed Qualification Exam.

Exhibit 15: Chronological List of Events (Letter Dated December 5th, 2005)

I completed and passed an exam in November of 2005 for the Position of Correctional Counselor I, with a respectable score and ranking. However in December of 2005 I received a letter from the Background Investigation Unit stating that I was no longer eligible for the Position of Correctional Counselor I due to "Suitability".

3) Placed on "Active" Status after SPB Appeal, However Was Not Hired.

Exhibit 15: Chronological List of Events (Letter from SPB Dated March 23rd, 2006)

After my Appeal of the disqualification of my Background Investigation (SPB Case No. 04-2148), I was placed back on Eligible status and attended approximately fifteen Interviews through May 2007. According to the feedback I received from panel members, I completed the interviews in a reasonably efficient manner. However I was never hired for the position.

4) False Allegations

Exhibit 16: Letter from the Office of Internal Affairs dated 8/23/2006

Allegations in Investigation # CC N-II-SVSP-356-06-A are not correct. The Investigation was initiated after I resigned from my position as an M&SSI. I was an M&SSI for five years and resigned with a clear personnel file and no pending actions. The CCI List is an Open list, thus it is not required to be a Department of Corrections employee. A pending Investigation prevents Department of Correction Employees from being hired in promotional positions. The allegations occurred three months prior to my resignation and I did not have any knowledge of them before June 30th, 2006.

5) Removed From Hiring List after EEOC Complaint

Exhibit 1: Notice of List Eligibility Dated 02/20/07

Exhibit 2: Notice dated May 10th, 2007 from CTF Soledad

Exhibit 18: Copy of Complaint Case # 3: cv-0117BZ

As of February 20th, 2007 I was still listed as "Eligible" for Correctional Counselor I by the Department of Corrections & Rehabilitation Certification Unit. On February 23rd, 2007 I filed a complaint of Discrimination (Case # 3:-cv-0117BZ) for not being hired. On May 12th, 2007 I received a letter stating that I was no longer eligible and removed from the Open Promotional List for CCI.

6) Department Position Is Not Accurate:

Exhibit 3: Withhold Response Form dated December 28th, 2006

Exhibit 4: Academic Evaluations

Exhibit 5: Academy Certificate

The Departments position is that I do not posses the desirable qualifications for the position of Correctional Counselor I, based on my "Suitability". I have proof that shows the contrary.

I have completed the entire curriculum for a Masters of Business Administration Degree from an accredited university and graduated with honors. My performance and work experience during my employment at the Correctional Training Facility in Soledad from 1986 until 1993 does not reflect the comments on my Background Information Transmittal: I did not have any negative Performance Evaluations or written Letters of Instruction. My performance was standard to excellent. I was a member of the Special Emergency Response Team for five years which requires a high degree of achievement, skills, conduct, and decision making. Including five years as an M&SSI, I have a total of twelve years experience with the California Department of Corrections and Rehabilitations.

7) Was Not Given Mandatory Performance Evaluations

Exhibit 6: Employment Inquiry for CTF Soledad dated 01/27/06

The Employment Inquiries for CCI state that I must submit a copy of my most recent Performance Evaluation with my application in order to interview.

I did not receive any employment for a three year period 2004, 2005, and 2006. In comparison with my co-workers during that period my performance was between standard and outstanding. Not having a recent Performance evaluation during this period gave me a disadvantage in the interview process.

8) Not Provided Representation for SPB Case #04-0650:

Exhibit 8: SPB Case 04-0650

Exhibit 9: Stationary Engineers, Local 39 letter dated June 2, 2004

Exhibit 7: Confidential Information Transmittal

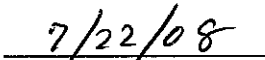
At the SPB hearing on June 8th, 2004, the local labor union did not provide me with proper representation according to the Bargaining Union Agreement on Report # 2003-ERO-019. This letter was in regards to case # 04-0650. It states that they withdrew from my representation in this matter. I received the letter on June 5th, 2004, thus did not allow me to properly prepare for the June 8th, 2004 hearing. The State Personnel Board agreed to have the Adverse Action removed from my personnel file. However this Report was used against me in a negative manner by the Background Investigation Unit.

Summary

The Statement of Facts supports my claim of Discrimination Title VII of the Civil Rights Act of 1964. Evidence clearly indicates that every time I proceeded with a Protective Activity for an Unfair Employment matter, the Department of Corrections and Rehabilitation initiated action that prevented my career advancement.

I declare under the penalty of perjury that the foregoing is true and correct and understand that a false statement herein may result in dismissal of my claims.


Rosario Marinello


Date